

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ARNOLD/BEATY, Minors.

UNPUBLISHED

April 24, 2014

No. 318469

Antrim Circuit Court

Family Division

LC No. 11-006099-NA

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from an order entered by the Family Division of the Antrim Circuit Court terminating her parental rights to her three minor children.¹ We affirm.

One of the children has cerebral palsy and is legally blind, non-verbal, and wheelchair-bound. Another child has severe ADHD, symptoms of reactive attachment disorder, and significant learning impairments. The third child has moderately severe ADHD and a sleeping disorder.

Respondent's children were first removed from the home in 2008, but were returned after she substantially complied with her case-services plan. Subsequently, the court once again took jurisdiction over the children in 2011. Again, they were returned and the case was closed after respondent substantially complied with her new case-services plan. Thereafter, on December 16, 2011, petitioner asked that the court assume jurisdiction over the children, in part because of concerns that respondent was selling crack cocaine in front of them. Respondent was provided with various services. Then, in June 2012, she was arrested after selling crack cocaine to an undercover informant on multiple occasions. Respondent participated in certain services while in jail and was provided with continuing services upon her release from jail.

Respondent argues on appeal that the court erred in terminating her parental rights because she had substantially complied with the case-services plan in this case and in the two previous cases involving her children. This Court reviews for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence.

¹ The parental rights of the two younger children's legal father were also terminated. He is not a party to this appeal.

MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* at 296-297.

The trial court indicated it was terminating respondent’s parental rights under MCL 712A.19b(3)(c), (g), and (j).² MCL 712A.19b(3) provides, in part:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

² The court also cited section 19b(3)(h), but from context it appears that this section applied only to respondent-father.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The testimony in this case clearly showed that respondent loved her children. However, it also clearly showed that she failed to provide proper care and custody for them and that the chance of her being able to provide proper care and custody within a reasonable time, considering the children's ages, was low.

In June 2012, respondent was arrested for having sold crack cocaine to police officers on two occasions. At the jail, the police located nine additional baggies of cocaine stuffed in her mouth. At her home, the police located drug paraphernalia ("baggies") in her bedroom. Respondent received a jail sentence after pleading guilty and served multiple months in jail. Significantly, at the time respondent was arrested, her children were already under the temporary jurisdiction of the court due in part to allegations that she was selling crack cocaine. Further, there was testimony that when she was arrested respondent was about to be evicted from her home, had multiple shut-off notices for utilities, and had limited food in the home.

Respondent successfully participated in and allegedly benefited from services in 2008 and again in 2011. She asserts that this shows that she can once again participate in and benefit from services in the current case. Her past success with services is a two-edged sword, however. It does show that she had made changes when called upon to do so. However, it also shows that she repeatedly regressed in her ability to care for her children despite the services provided. Moreover, and significantly, in the current case, her caseworker testified that she did not believe respondent actually benefited from any of the services offered.

Further, contrary to her assertions on appeal, respondent did not comply with all of the services provided and recommended. It was recommended that she obtain a psychiatric evaluation, which she never did. In addition, multiple service providers declined to provide her services because respondent did not acknowledge her various problems. Additionally, a psychologist testified that respondent had antisocial personality disorder with borderline and dependent traits and that it would be very difficult and time-consuming to treat this. He opined that it would take at least two years, with the "first and minimal step" being to get sober. He also noted that the success rate for treatment was low. Additionally, he testified that he did not believe respondent would be able to provide the level of care that her oldest child required because of both respondent's and the child's ADHD and other problems. He opined that they "make each other worse." Finally, although respondent started the case "couch surfing" and then moved to a shelter before leasing a home, her caseworker testified that the home was not appropriate because it lacked a handicap ramp, which would be required for one of the children.

There was clear and convincing evidence supporting termination under MCL 712A.19b(3)(g). Because only one ground for termination is necessary, this Court does not have to address whether termination was proper under the other grounds that the trial court found to be established. *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012). However, the above evidence also supports a finding that the other statutory grounds were established. Respondent's substance-abuse problems and associated criminal activity continue to be issues and have directly impacted the children. She has problematic mental issues and has failed to

provide stability and a proper home. Given her lifestyle and the children's needs, the record supports a finding that there is a likelihood that the children would be harmed if returned to her care.

We also reject respondent's assertion that the court erred in finding that termination was in the children's best interests. This Court reviews for clear error the trial court's determination that termination of parental rights is in the best interests of the children. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, ___ Mich App ___, ___ NW2d ___ (Docket No. 316749, issued January 16, 2014), slip op p 6. The trial court may also consider an unfavorable psychological evaluation and the child's age. See *In re Jones*, 286 Mich App at 131. The court must determine each child's best interests individually. *In re Olive/Metts Minors*, 297 Mich App at 42. However, unless the best interests of the individual children "significantly differ" the trial court does not err "if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests." *In re White*, ___ Mich App ___, ___ NW2d ___ (Docket No. 316749, issued January 16, 2014), slip op p 7.

The trial court did not specifically state which facts it was considering or relying on to support its decision that termination of respondent's parental rights was in the children's best interests. Instead, before stating the facts, the court found that "based upon the following, . . . it is clearly in the best interest of each child" for respondent's parental rights to be terminated. Further, after stating the facts, the court found that "based on the foregoing, . . . termination of each parent's parental rights is clearly in the best interest" of each child. Accordingly, the court's decision was based upon the entirety of the record.

Respondent presented testimony that she had a bond with her children, and there was testimony that the children were happy to see her during parenting time. However, there was also testimony that her oldest child had significant physical health problems, including diarrhea, stomach problems, and hives, around the time of the parenting-time visits. The caseworker testified that his physical problems became less significant after respondent stopped having parenting time with him. In addition, the psychologist testified that he did not see a connection between the oldest child and respondent and that the middle child's relationship with respondent was "quite poor." He believed that the children had poor connections in general. He testified that given respondent's low likelihood of success with treatment, the children would be at a continuing risk for problems if reunification were to be attempted. He believed the children

would have a “much higher likelihood of success” if they were in a home without substance abuse and with a non-ADHD parent who is stable. He opined that it was not in the children’s best interests to continue to try to reunify.

The caseworker also testified that it was in the children’s best interests to terminate respondent’s parental rights because, in part, respondent is “disconnect[ed]” from the case, does not feel committed to what is happening, and provides poor guidance to the children. Further, another psychologist who had evaluated respondent in 2008 opined that “in the five years [since], if [respondent] has not demonstrated much improvement at that time, I don’t see what significant evidence there is to get her to change that pattern.”

There was a preponderance of the evidence in support of the trial court’s determination that termination of respondent’s parental rights was in the children’s best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O’Connell
/s/ Douglas B. Shapiro